

# STATE OF INDIANA

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## MEMORANDUM

TO: Township Board Members, Township Trustees, and County Auditors

CC: County Council Members and County Commissioners

FROM: Cheryl A.W. Musgrave, Commissioner *CWOM*

DATE: July 18, 2008

SUBJECT: Township Fire and Emergency Services and Fire Apparatus and Equipment Loans

1. The purpose of this memorandum is to inform township boards, township trustees, and county officials of the changes to the township fire and emergency services loan process, and the township firefighting apparatus and equipment loan review and approval procedures. This memorandum will discuss the new role of the Department of Local Government Finance ("Department") with regards to the review and approval process, and other changes to the law.

2. HEA 1001 (P.L. 146-2008), the landmark property tax reform law passed in 2008, changed the review and approval processes for township fire and emergency services loans, and township firefighting apparatus and equipment loans. As discussed below, *the Department is no longer required to review or approve either loan if the loan was approved by the township without objection by at least ten (10) taxpayers*. If there are taxpayer objections to the township's decision to borrow, the Department must, as it does now, conduct a public hearing and issue a final determination on the proposed loan(s).

3. Below is an executive summary of the relevant statutes regarding township fire and emergency services loans, and firefighting apparatus and equipment loans. The asterisk (\*) indicates a new section added to the Indiana Code in 2008. The words in **bold** designate new language added to the Indiana Code in 2008, or the effective date of the particular section of the Indiana Code. The section titled "Department's Note" in *italics* and in **bold** either provides an interpretation of the Department on a particular section, or highlights a point of importance.

## TOWNSHIP FIRE AND EMERGENCY SERVICES LOANS

4. \*Special Meeting of the Township Board; Notice; Matters to be Considered. HEA 1001 (P.L. 146-2008), Section 714 added a new section to the Indiana Code, IC 36-6-6-13.5, effective on **March 19, 2008**.

a. A special meeting may be held by the township board if the township trustee, the chairman of the township board, or a majority of the members of the township board issue a written notice of the meeting to each member of the township board. The notice must state the time, place, and purpose of the meeting.

*Department's Note: This language above was formerly found in IC 36-6-6-14(a) prior to the passage of HEA 1001.*

b. The township board may consider any matter at a special meeting. However, the only matters that may be acted on at the special meeting are the matters listed in the public notice.

5. Special Meeting; Fire and Emergency Services Loan. HEA 1001, Section 715 amended IC 36-6-6-14, effective on **March 19, 2008.**

a. At **any** special meeting, if two (2) or more members give their consent, the township board may determine whether there is **a need for fire and emergency services or other** emergency requiring the expenditure of money not included in the township's budget estimates and levy.

b. If the township board finds that **a need for fire and emergency services or other** emergency exists, it may issue a special order, entered and signed on the record, authorizing the township trustee to borrow a specified amount of money sufficient to meet the emergency; unless ten (10) or more taxpayers object to the township board's decision to borrow under IC 36-6-6-14.5.

*Department's Note: The law now allows a township board to borrow money if it finds there is "a need for fire and emergency services or other emergency exists." Previously, to obtain such a loan, the township board had to find that an "emergency exists."*

c. The township board may authorize the township trustee to borrow from a township fund other than the township firefighting fund if the township board finds the emergency is related to paying the operating expenses of a township fire department or a volunteer fire department. At its next annual session, the township board must cover the debt by making a levy to credit the fund from which the amount was borrowed.

d. In determining whether a fire and emergency services need exists requiring the expenditure of money *not* included in the township's budget estimates and levy, the township board and any reviewing authority (i.e., the Department) considering the approval of the additional borrowing must consider the following factors:

(1) The current and projected certified and noncertified public safety payroll needs of the township.

(2) The current and projected need for fire and emergency services within the jurisdiction served by the township.

(3) Any applicable national standards or recommendations for the provision of fire protection and emergency services.

(4) Current and projected growth in the number of residents and other citizens served by the township, emergency service runs, certified and noncertified personnel, and other appropriate measures of public safety needs in the jurisdiction served by the township.

(5) Salary comparisons for certified and noncertified public safety personnel in the township and other surrounding or comparable jurisdictions.

(6) Prior annual expenditures for fire and emergency services, including all amounts budgeted under IC 36-6-6.

(7) Current and projected growth in the assessed value of property requiring protection in the jurisdiction served by the township.

(8) Other factors directly related to the provision of public safety within the jurisdiction served by the township.

e. In the event the township received additional funds under these provisions in IC 36-6-6 in the previous budget year, any reviewing authority (i.e., the Department) must take into consideration the use of the funds in the previous budget year and the continued need for funding the services and operations with the proceeds of the loan.

*Department's Note: The township board and Department (if applicable) are required to consider these eight (8) factors in order to determine whether a need exists for fire and emergency services. However, as with the firefighting apparatus and equipment loan (paragraph 8 below), review and approval by the Department is not required before the township may execute the loan and undertake this obligation (paragraph 10 below) unless there is an objection petition filed by the requisite number of taxpayers (paragraph 6 below).*

#### 6. Taxpayers' Objections; Judicial Review.

a. No legislation during the 2008 Indiana General Assembly changed IC 36-6-6-14.5. This statute still allows ten (10) or more taxpayers in the township who disagree with the township board's order authorizing the township trustee to borrow money, to file a petition with the county auditor within thirty (30) days after notice of the township board's special order is issued. The objectors' petition must state their objections and the reasons why they believe the township board's special order is "unnecessary or unwise."

b. The county auditor is still required to immediately certify a copy of the petition, together with other data necessary to present the questions involved, to the Department. Upon receipt of the certified petition and other data, the Department is still required to fix a time and place for a public hearing on the matter. The hearing must be held between five (5) and thirty (30) days after the Department's receipt of the certified documents from the county auditor.

c. The hearing is still required to be held in the county where the petition arose.

d. Notice of the hearing must still be given by the Department to the township and to the first ten (10) taxpayer petitioners listed on the petition. The Department's notice must be issued by letter. The letter must be sent to the first ten (10) taxpayer petitioners at the taxpayer's usual place of residence at least five (5) days before the date of the public hearing.

e. A taxpayer who signed a petition; or the township against which a petition was filed, may appeal the Department's final determination to the Indiana Tax Court. The appeal must be filed not more than forty-five (45) days after the date of the Department's final determination.

***Department's Note: Regardless of the changes in HEA 1001 to the township loan review and approval process (paragraph 10), if there are taxpayer objections filed, the Department must conduct a public hearing and issue a final determination on the proposed loan. The objection and public hearing process remains the same as it did before passage of HEA 1001.***

7. Temporary Loans to Meet Current Expenses. HEA 1001, Section 716 amended IC 36-6-6-15, effective on March 19, 2008. If the township board finds that an emergency requires the borrowing of money to meet the township's current expenses, it may take out temporary loans in an amount not more than **eighty percent (80%)** of the total anticipated revenue for the remainder of the year in which the loans are taken out.

***Department's Note: This is a change from the pre-HEA 1001 limit of fifty percent (50%) of the total anticipated revenue for the remainder of the year.***

### **FIREFIGHTING APPARATUS AND EQUIPMENT LOANS**

8. Purchase of Firefighting Apparatus and Equipment; Loans; Tax Levy. No legislation during the 2008 Indiana General Assembly changed IC 36-8-13-6. The township trustee and township board, on behalf of the township, may still borrow the necessary money from a financial institution (e.g., bank) in Indiana toward the purchase of firefighting apparatus and equipment on the same terms described in IC 36-8-13-5 (i.e., for a period not exceeding six (6) years; or fifteen (15) years depending upon the total assessed value and seller of the firefighting equipment).

***Department's Note: The loan procedure for the purchase of firefighting apparatus and equipment is a separate loan process than the fire and emergency services loan discussed above (see paragraph 5 above). However, as with the township fire and emergency services loan, review and approval by the Department is not required before the township may execute the loan and undertake this obligation (see paragraph 10 below) unless there is a an objection petition filed by the requisite number of taxpayers (see paragraph 9 below).***

9. Taxpayers' Objections; judicial review. No legislation during the 2008 Indiana General Assembly changed IC 36-8-13-6.5.

a. If the township determines money should be borrowed for firefighting equipment and apparatus above, ten (10) taxpayers or more in the township who disagree with the determination of the township may file a petition with the county auditor not more than thirty (30) days after notice of the township's determination is given. The petition must state the taxpayers' objections and the reasons why the taxpayers believe the borrowing to be unnecessary or unwise.

b. The county auditor must immediately certify a copy of the petition, together with other data necessary to present the questions involved, to the Department. Upon receipt of the certified petition and other data, the Department must fix a time and place for the hearing of the matter. The hearing must be held between five (5) and thirty (30) days after the Department's receipt of the certified documents.

c. The hearing must be held in the county where the petition arose.

d. Notice of the hearing must be given by the Department to the township and to the first ten (10) taxpayer petitioners listed on the petition by letter. The letter must be sent to the first ten (10) taxpayer petitioners at the taxpayer's usual place of residence at least five (5) days before the date of the hearing.

e. A taxpayer who signed a petition; or the township may petition for judicial review of the final determination of the Department by the Indiana Tax Court not more than forty-five (45) days after the date of the Department's final determination.

***Department's Note: If there are taxpayer objections filed against the firefighting apparatus and equipment loan, the Department must conduct a public hearing and issue a final determination on the proposed loan. This taxpayer objection and public hearing process remains the same as it did before passage of HEA 1001.***

#### **REVIEW AND APPROVAL BY DEPARTMENT**

10. Exemption from levy limits; bonded indebtedness; leases; judicial review. HEA 1001, Section 171 amended IC 6-1.1-18.5-8, effective on **March 19, 2008**. This amended section of the Indiana Code applies to a "civil taxing unit," which is defined by IC 6-1.1-18.5-1 as any taxing unit except a school corporation. IC 6-1.1-1-21 defines "taxing unit" as an entity that has the power to impose property taxes. A township is a civil taxing unit.

a. For "bonds, leases, and other obligations" for which a township:

(1) makes a preliminary determination in IC 6-1.1-20-3.1 or IC 6-1.1-20-3.5 or a decision in IC 6-1.1-20-5 *after June 30, 2008*; or

(2) adopts a resolution or ordinance *after June 30, 2008* authorizing the bonds, lease rental agreement, or other obligations that are payable from property taxes and that are *not* described above --

-- review and approval by the Department is not required before a township may issue or enter into bonds, a lease, or any other obligation.

b. After June 30, 2008, review and approval by the Department is not required before a township may construct, alter, or repair a capital project.

***Department's Note:** The Department has determined that a township fire and emergency services loan and firefighting apparatus and equipment loan is an "obligation" under this section; thus, review and approval by the Department is not required before the township may execute the loan(s) and undertake the obligation(s). However, if there is a taxpayer objection petition filed with the county auditor to the fire and emergency services loan (see paragraph 6 above) or the firefighting apparatus and equipment loan (see paragraph 9 above), the Department must conduct a public hearing and issue a final determination on the proposed township loan.*

### **LEVY APPEALS FOR TOWNSHIP FIRE AND EMERGENCY SERVICES LOANS**

11. Levy Appeal to Department. HEA 1001, Section 179 amended IC 6-1.1-18.5-12, effective on **January 1, 2009**. The only change to IC 6-1.1-18.5-12 was the removal of all references to the county board of tax and capital projects review.

a. Even with the changes in HEA 1001, the law still allows a civil taxing unit (e.g., township) that determines it cannot carry out its governmental functions for the following calendar year:

(1) before September 20; *or*

(2) in the case of a levy shortfall request, before December 31 --

-- to appeal to the Department for relief from the maximum property tax levy limits. In the appeal, the township must state it will be unable to carry out the governmental functions committed to it by law unless it is given the requested authority to increase its property tax levy. The township must support these allegations by reasonably detailed statements of fact.

b. Upon receipt of such a township appeal, the Department must promptly deliver to the Local Government Tax Control Board ("Control Board") every appeal petition it receives and any materials it receives relevant to those appeals. The Control Board must immediately examine and consider the merits of the township's excess levy appeal.

c. In considering an excess levy appeal, the Control Board has the power to conduct hearings, require any officer or member of the appealing civil taxing unit to appear before it, or require any officer or member of the appealing township to provide the Control Board with any relevant records or books.

12. Appeal for Increase in Levy for Fire and Emergency Services Loan. HEA 1001, Section 180 amended IC 6-1.1-18.5-13(11), effective upon **March 19, 2008**. A levy increase to the township

based upon *the least* of the amounts borrowed for fire and emergency services during the previous three (3) calendar years [e.g., 2005, 2006, and 2007] may not be granted for property taxes first due and payable *after* December 31, **2008** [e.g., pay-2009].

***Department's Note: An excess levy appeal for fire and emergency services loans based upon the township's previous three (3) years' fire and emergency services loans is not available for pay-2009.***

13. Fire Protection Districts and Fire Protection Territories.

a. A memorandum on Fire Protection Districts issued by the Department on March 20, 2008 may be found at:

[http://www.in.gov/dlgf/files/Fire\\_Protection\\_District\\_memo\\_to\\_Counties\\_Municipalities\\_Townships.pdf](http://www.in.gov/dlgf/files/Fire_Protection_District_memo_to_Counties_Municipalities_Townships.pdf).

b. The Department will issue a separate memorandum on Fire Protection Territories within the coming weeks.

If you have any questions about this memorandum, please contact the budget field representative for your county. The contact information for each budget field representative may be found at [http://www.in.gov/dlgf/files/Budget\\_Field\\_Staff\\_Assignments\\_and\\_Numbers.pdf](http://www.in.gov/dlgf/files/Budget_Field_Staff_Assignments_and_Numbers.pdf).